CAD Vol 7 UCC Debate

அரசியல் அமைப்பு சட்ட அசெம்பிளி சீரான உரிமையியல் குறித்த விவாதம்

நவம்பர் 23 1948



சிறு பிரசுரம்

A Leaflet in English

CAD Document vol 7 **Debate on UCC**

அரசியல் அமைப்பு சட்ட அசெம்பிளியில் சீரான உரிமையியல் சட்டம் குறித்து நவம்பர் 23, 1948ல் நடந்த விவாதம் இங்கு தரப்பட்டுள்ளது. அப்போது அந்த ஷரத்து 1948 நகலில் 35 ஆக இருந்தது. அரசியல் அமைப்பு சட்டம் ஏற்பிற்கு பின்னர் அது இன்றுவரை ஷரத்து 44 ஆக இருந்து வருகிறது.

அவையை துணைத்தலைவர் டாக்டர் எச் சி முகர்ஜி வழிநடத்தினார். இந்த விவாதத்தில் அவையில் இருந்த முஸ்லீம் உறுப்பினர்கள் பங்கேற்று திருத்தங்களை கொடுத்து தங்கள் அய்யப்பாடுகளையும், கோரிக்கைகளையும் முன்வைத்தனர். தனிச்சட்டத்திற்கு பாதிப்பு வந்துவிடுமோ என்கிற சந்தேகம் அவர்களிடம் இருந்தது.

முகம்மது இஸ்மாயில் கான், நசிருதின் அகமது, மகபூப் அலி பைக், தெல்லிச்சேரி போக்கர், ஹீசைன் இமாம் போன்றவர்கள் திருத்தங்களை கொடுத்து விவாதித்தனர். ஆர்ட்டிகல் 35 ஏற்கப்படவேண்டும் என அனந்தசயனம் அய்யங்கார், எல் கிருஷ்ணசாமி பாரதி, கே எம் முன்ஷி, அல்லாடி கிருஷ்ணசாமி அய்யர் ஆகியோர் விவாதித்தனர். கிருஷ்ணசாமி பாரதி நாவலர் சோசசுந்தரபாரதியின் மகள் லட்சுமி பாரதியை மணந்தவர்.

திருத்தங்களை ஏற்கவியலாது என விளக்கமளித்து அம்பேத்கர் விவாதத்திற்கு பதில் அளித்தார். அம்பேத்கர் அவர்களின் விளக்கத்தையடுத்து துணைத்தலைவர் முகர்ஜி அவர்கள் திருத்தங்கள் ஏற்கப்படவில்லை என்பதுடன் அந்த 35 ஷரத்து அரசியல் அமைப்பு சட்டத்தில் ஏற்கப்பட்டு இடம்பெற்றதாக அறிவித்தார். இந்த விவாதங்கள் இங்கு அப்படியே சிறு பிரசுரமாக தரப்பட்டுள்ளது. ஆர்வம் உள்ளவர் வாசித்து புரிந்து கொள்ளலாம்.

7-7-2023 - ஆர். பட்டாபிராமன்

CAD Debate on UCC

Article 35, Draft Constitution of India 1948

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

This became Article 44, Constitution of India 1950

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Draft Article 35 (Article 44) was debated on 23 November 1948. It directed the State to bring about a uniform civil code across India.

The debate around the Draft Article triggered conflict in the Assembly. Most of the opposition to the Draft Article came from Muslim members who moved amendments to keep personal laws out of it's scope. One member proposed a proviso that would have operationalised the Draft Article only with the prior assent of the community.

The arguments mobilised to attack the Draft Article included — first, that uniform civil code violated freedom of religion; second, that it would create disharmony within the Muslim community; and third, that it was incorrect to interfere with personal law without the approval of the specific religious communities involved.

A Drafting Committee member defended the provision and argued that a uniform civil code was important to uphold the unity of the country, and the Constitution's secular credentials. He reminded Muslims members that this was not a provision that would affect the Muslim community alone – even the Hindu community would be affected. He further added that women's rights could never be secured without a uniform civil code.

At the end of the debate, it was clarified that there was nothing new about the uniform civil code: there was already a common civil code in India. The only difference with the new code was that it would cover marriage and inheritance – which were not under the scope of the existing code. It was also pointed out that this was a Directive Principle, the State was not obliged to bring the provision into effect immediately and it should only do so when it obtained the consent of all communities,

The Draft Article was adopted on the same day, without any amendments.

Amendments and debate

Mohammad Ismail Khan -

Sir, I move that the following proviso be added to article 35:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

7.58.107

Mohammad Ismail Khan

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

7.58.108

Mohammad Ismail Khan

Now the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussulmans reads as follows:

"The Serb, Croat and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage."

7.58.109

Mohammad Ismail Khan

We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, "Any group, section or community of people shall not be obliged" etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

7.58.110

Mohammad Ismail Khan

Again this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code, as in article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

7.58.111

Suresh Chandra Majumdar

Sir, on a point of order, what is being said now is a direct negation of article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

7.58.112

Mohammad Ismail Khan

Article 35 reads thus:

"The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

7.58.113

Mohammad Ismail Khan

That will include the personal law as well.

7.58.114

Vice-President

I hold that the Honourable Member is in order.

7.58.115

Mohammad Ismail Khan

Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

7.58.116

Naziruddin Ahmad

Sir, I beg to move:

“That to article 35, the following proviso be added, namely: –

‘Provided that the personal law of any community which has been guaranteed by the statue shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law’.”

7.58.117

Naziruddin Ahmad

In moving this, I do not wish to confine my remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that `subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.’ In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that `Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice’. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), viz. financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19. I submit, Sir, that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek

enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

7.58.118

Naziruddin Ahmad

I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?

7.58.119

Naziruddin Ahmad

This is only one instance of how interference can go too far. As I have already submitted, the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to

ascertain the consent of the community through their representatives, and this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to do or was afraid to do, what the Muslims in the course of 500 years refrained from doing, we should not give power to the State to do all at once. I submit, Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy.

(B. Pocker Sahib Bahadur rose to speak.)

7.58.120

Vice-President

When we discuss the clause as a whole, you will get your chance. Amendment No. 960. The Mover has called it a new sub-clause, that is 35-A. We can take it up later on. The article as a whole is now under consideration.

7.58.121

Mahboob Ali Baig

I have given notice of an amendment to article 35. It is No. 833.

7.58.122

Vice-President

That escaped my attention. I am glad you pointed that out.

7.58.123

Mahboob Ali Baig

Sir, I move that the following proviso be added to article 35:

"Provided that nothing in this article shall affect the personal law of the citizen."

7.58.124

Mahboob Ali Baig

My view of article 35 is that the words “Civil Code” do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression “Civil Code”, I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

7.58.125

Ananthasayanam Ayyangar

It is a matter of contract.

7.58.126

Mahboob Ali Baig

I know that Mr. Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practised by Muslims and recognised by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also, their personal law depends entirely upon their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their religious tenets should be observed.

7.58.127

L. Krishnaswami Bharathi

It is sought to be done only by consent of all concerned.

7.58.128

Vice-President

Mr. Bharathi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while. I know they feel very strongly on this matter.

7.58.129

L. Krishnaswami Bharathi

My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not labour that point.

7.58.130

Vice-President

It is understood and I thank you for it.

7.58.131

Mahboob Ali Baig

Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil code". With this observation, I move that that it may be made clear by this proviso, lest an interpretation may be given to it that these words "Civil code" include personal law of any community.

7.58.132

B. Pocker

Mr. Vice-President, Sir, I support the motion which has already been moved by Mr. Mohamed Ismail Sahib to the effect that the following proviso be added to article 35: –

"Provide that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

7.58.133

B. Pocker

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will not that one of the reasons why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean, – which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

7.58.134

B. Pocker

In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts

in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feelings of the Mussalmans. In saying this, I am voicing forth the feelings of ever so many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.

7.58.135

B. Pocker

Now, Sir, just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these matters. I am referring to many pamphlets which I have received from organisations other than Mussalmans, from organisations of the Hindus, who characterize such interference as most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?

7.58.136

B. Pocker

If such a body as this interferes with the religious rights and practices, it will be tyrannous. These organisations have used a much stronger language than I amusing, Sir. Therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabaga systems; there are so many other systems followed by various other communities. What is it that you are making the basis? Is it open to us to do anything of this sort? By this one clause you are revolutionising the whole country and the whole setup. There is no need for it.

7.58.137

B. Pocker

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Rights in article 19. If it is antagonistic, what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionised? Is it intended? I do not know what the framers of this article mean by this. On a matter of such grave importance, I am very sorry to find that the framers or the draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in that Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to you and all the Members of this House to take very serious notice of this article; it is not a light thing to be passed like this.

7.58.138

B. Pocker

In this connection, Sir, I would submit that I have given notice of an amendment to the Fundamental Right article also. This is only a Directive Principle.

7.58.139

Vice-President

That may be taken up at the proper time.

7.58.140

B. Pocker

What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.

7.58.141

Hussain Imam

Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas,–I know of Jharkhand and Santhal Parganas–we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive thattheir personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

7.58.142

Hussain Imam

Even today under the Criminal law you give juvenile offenders a lighter punishment than you do to adult offenders. The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this.

7.58.143

K. M. Munshi

Mr. Vice-President, I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in article 19; and secondly, it is tyrannous to the minority.

7.58.144

K. M. Munshi

As regards article 19 the House accepted it and made it quite clear that—"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating or restricting"—I am omitting the unnecessary words—"or other secular activity which maybe associated with religious practices; (b) for social welfare and reforms". Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

7.58.145

K. M. Munshi

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is

that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

7.58.146

K. M. Munshi

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

7.58.147

K. M. Munshi

They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legislative Assembly. If one looks at Manu and Yagnyavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article.

7.58.148

K. M. Munshi

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.

7.58.149

K. M. Munshi

I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

7.58.150

K. M. Munshi

There is one important consideration which we have to bear in mind–and I want my Muslim friends to realise this–that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors–and important factors–which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, "Well, we are not merely a nation because we say so, but also in effect, by the way

we live, byour personal law, we are a strong and consolidated nation". From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

7.58.151

K. M. Munshi

This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honourable Member who spoke last of a particular incident from Fereshta which comes to my mind, Allauddin Khilji made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was—"I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, the Almighty will forgive me, when he finds that I have not acted according to the Shariat." If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

7.58.152

Alladi Krishnaswami Ayyar

Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any real objection to the article as it runs.

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

7.58.153

Alladi Krishnaswami Ayyar

A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar

matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

7.58.154

Alladi Krishnaswami Ayyar

The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue.

7.58.155

Alladi Krishnaswami Ayyar

Now, my friend Mr. Pocker levelled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslim stake exception, and did they revolt against the British for introducing a single system of criminal law? Similarly we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Koran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

7.58.156

Alladi Krishnaswami Ayyar

Therefore, when there is impact between two civilizations or between two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

7.58.157

Alladi Krishnaswami Ayyar

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Christians, there are Jews, indifferent European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries of Europe, or whether the laws of succession are not co-ordinated and unified in the various States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries, there is a single system of law or different systems of law.

7.58.158

Alladi Krishnaswami Ayyar

Leave alone people who are there. Today, even in regard to people in other parts of the country, if they have property in the continent of Europe where the German Civil Code or the French Civil Code obtains, the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Moslem law, unlike under Hindu law, marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Koran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature will be so unwise as to attempt it, apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take lessons from the minority and adapt their Hindu Laws and take a leaf from the Muslims for the purpose of reforming even the Hindu Law. Therefore, there is no force to the objection that is put forward to article 35. The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to

contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?

7.58.159

Alladi Krishnaswami Ayyar

Therefore, for those reasons, I submit that the House may unanimously pass this article which has been placed before the Members after due consideration.

7.58.160

B. R. Ambedkar

Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

7.58.161

B. R. Ambedkar

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument

whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

7.58.162

B. R. Ambedkar

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shari at Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shari at Law to them. That is not all.

7.58.163

B. R. Ambedkar

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

7.58.164

B. R. Ambedkar

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all—not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

7.58.165

B. R. Ambedkar

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathyam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindus, law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

7.58.166

B. R. Ambedkar

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision byway of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

7.58.167

Vice-President

The question is:

“That the following proviso be added to article 35:

‘Provided that any group, section or community or people shall not be obliged to give up its own personal law in case it has such a law’.”

The motion was negatived.

7.58.168

Vice-President

The question is:

“That to article 35, the following proviso be added, namely,

‘Provided that the personal law of any community which is guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law`.”

The motion was negatived.

7.58.169

Vice-President

The question is:

“That Part IV of the Draft Constitution be deleted.”

The motion was negatived.

7.58.170

Vice-President

The question is:

“That article 35, stand part of the Constitution.”

The motion was adopted.

Article 35 was added to the Constitution.